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February 7, 2019

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24,
*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with
Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

CaptionCall, LLC herein submits a REDACTED version of a notice of ex parte in the above-referenced proceedings.

CaptionCall is submitting a Highly Confidential version of this notice of ex parte pursuant to the *Third Protective Order* adopted for the above-captioned dockets.¹ CaptionCall has received written approval from staff to designate for Highly Confidential treatment the marked portions of the attached ex parte, which include “[g]ranular information about [its] past [and] . . . future costs.”²

Pursuant to the *Third Protective Order*, CaptionCall is submitting the Highly Confidential version for the Secretary and two copies for Eliot Greenwald. Electronic copies of the Highly Confidential Documents are also being sent by email to TRSReports@fcc.gov and Eliot Greenwald.

Please contact me if you have any questions or require any additional information.

Sincerely,
/s/ Rebekah P. Goodheart
Rebekah P. Goodheart

¹ See *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Third Protective Order, CG Docket Nos. 03-123, 10-51, 13-24, DA 18-751 (2018) (“*Third Protective Order*”).

² *Third Protective Order* Appendix B.

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cc: Eliot Greenwald
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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24;
*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with
Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

On February 6, 2019, Cindy Williams, General Counsel, CaptionCall, LLC; John T. Nakahata, Partner, Harris, Wiltshire & Grannis LLP, outside counsel to Sorenson Communications; and the undersigned of Jenner & Block LLP met with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety to Commissioner Rosenworcel and, separately, with Bob Aldrich, Eliot Greenwald, and Michael Scott of the Consumer and Governmental Affairs Bureau and David Schmidt of the Office of the Managing Director. On February 7, 2019, we met separately with Arielle Roth, Wireline Legal Advisor to Commissioner O’Rielly; Michael Carowitz, Special Counsel to Chairman Pai; Jamie Susskind, Chief of Staff to Commissioner Carr and Wayne Buckholder, intern, Office of Commissioner Carr; and Randy Clarke, the Acting Legal Advisor for Wireline and Public Safety to Commissioner Starks.¹

CaptionCall supports the Federal Communications Commission’s (the “Commission’s”) goal of ensuring that the Telecommunications Relay Service (“TRS”) Fund is free from waste, fraud, and abuse. Moreover, CaptionCall specifically supports the adoption of targeted reforms to the IP CTS program, including proposals from the Commission’s recent Further Notice of Proposed Rulemaking in the above-referenced dockets.² For the reasons explained below,

¹ Cindy Williams did not attend the meeting with Randy Clarke.

² *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800 (2018) (“FNPRM”); *see also* Reply Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 03-123, at 7-11 (Oct. 16, 2018) (“*CaptionCall Reply Comments*”); Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 03-123, at 23-27 (Sept. 17, 2018) (“*CaptionCall Comments*”).

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however, the Commission should refresh the record, take into account lessons learned from the experience of Video Relay Service (“VRS”) providers, and evaluate the costs of integrating IP CTS into the User Registration Database (“URD” or “Database”) before moving forward with its recent *Draft Order* on URD integration.³ Moving the URD from the Order to the FNPRM will allow the Commission to consider URD integration as part of a holistic approach to modernizing the IP CTS program. Doing so would also minimize burdens on consumers by avoiding having to contact consumers more than once to collect information necessary to implement any changes adopted in the pending rulemaking. If the Commission nonetheless decides to adopt the URD for IP CTS now, at a minimum, it should extend the time for implementation and adopt other modifications, discussed below, which will facilitate an efficient integration of IP CTS and reduce the burdens on providers and users.

I. The *Draft Order* Lacks Adequate Foundation in the Record and Its Adoption Would Not Reflect Reasoned Decision Making Under the Administrative Procedure Act.

The Commission’s proffered basis for integrating IP CTS into the Database is to combat perceived waste, fraud, and abuse in the program.⁴ As noted, CaptionCall is committed to working with the Commission to adopt targeted reforms to ensure that no waste, fraud or abuse is introduced into the program. But the Commission’s reasoning that the URD is needed for IP CTS now, rather than after further notice and comment, falls short for the following reasons.

First, as courts have repeatedly held, the unexplained use of obsolete data renders agency actions arbitrary and capricious under the APA.⁵ Yet the Commission relies on comments from the 2013 IP CTS rulemaking, without articulating why their arguments are still meaningful.⁶ Indeed, there have been significant changes in the intervening six years that render the 2013 record hopelessly stale.⁷ Moreover, even if a six-year-old record could be relied upon to reflect

³ See *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, Further Notice of Proposed Rulemaking, and Order, FCC-CIRC1901-04 (Jan. 3, 2019) (“*Draft Order*”).

⁴ See *Draft Order* ¶¶ 1, 14.

⁵ See, e.g., *Sierra Club v. U.S. EPA*, 671 F.3d 955, 968 (9th Cir. 2012) (explaining that agency failed to bring its expertise to bear when it “did not adequately address the staleness of its data and availability of more current data before reaching its conclusion”); cf. *Town Of Winthrop v. FAA*, 535 F.3d 1, 9-10 (1st Cir. 2008) (noting that agencies are not required to use “the most current and comprehensive data available” but they must reasonably articulate why out-of-date data are reliable and not disproven by more recent data (quotation marks omitted)).

⁶ See *Draft Order* ¶ 14 nn.33-34, 41.

⁷ To name just a few examples: demographics have changed, as the U.S. population has become older; health practices have changed, and the proportion of Americans undergoing a hearing screening during a physical exam is higher now than ever before; and the Commission has since adopted rules to prevent unauthorized or fraudulent use of IP CTS. See *CaptionCall Comments* at 16-18, 28-29.

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accurately the current state of an agency program—which it cannot—this *particular* six-year-old record already has been found by the D.C. Circuit to be inadequate on the precise issue of whether there is waste, fraud, or abuse in the IP CTS program to combat.⁸

Second, the *Draft Order* fails to adequately address the fact that the record in the Commission’s ongoing IP CTS rulemaking reinforces that there is no evidence of systematic or significant (if any) waste, fraud, or abuse in the program to combat.⁹ Indeed, the *Draft Order* fails to even *acknowledge* the recent record, which shows that growth of IP CTS is organic and not attributable to any waste, fraud or abuse.¹⁰ The *Draft Order* instead cites the Commission’s June 2018 *FNPRM* for the existence of fraud, repeating the same mistaken assumption that demand growth for IP CTS somehow must be attributable to fraud.¹¹ Yet, as the Consumer Groups explained in a recent submission to the Commission:

[T]he [current] record contains little more than conjecture and speculation that the high levels of use of the program are a result of waste, fraud, and abuse rather than significant, legitimate demand from the large community of Americans who are deaf or hard of hearing to exercise their civil rights to functionally equivalent access to communications.¹²

⁸ See *Sorenson Commc’ns, Inc. v. FCC*, 755 F.3d 702, 707, 710 (D.C. Cir. 2014) (invalidating user eligibility restrictions where, among other things, “the agency offers no evidence suggesting there is fraud to deter” and describing the Commission’s rules as designed to combat a “bogeyman whose existence was never verified, *i.e.*, the fraudulent use of IP CTS technology”).

⁹ See *CaptionCall Reply Comments* at 3-6 (summarizing wide range of commenters who agree that there is not waste, fraud, or abuse to combat); see also, *e.g.*, Comments of Hearing Loss Association of America (HLAA) et al., CG Docket Nos. 13-24, 03-123, at iv (Sept. 17, 2018); Comments of American Speech-Language-Hearing Association, CG Docket Nos. 13-24, 03-123, at 1-2 (Sept. 14, 2018); Comments of International Hearing Society, CG Docket Nos. 13-24, 03-123, at 1 (Sept. 17, 2018); Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24, 03-123, at 16-18 (Sept. 17, 2018); Comments of Sprint Corp., CG Docket Nos. 13-24, 03-123, at 5-6 (Sept. 17, 2018).

¹⁰ See *CaptionCall Reply Comments* at 2; *id.* at 4-5.

¹¹ See *Draft Order* ¶ 14 nn.37-38.

¹² Letter from Blake E. Reid, Colleen McCroskey, and Corian Zacher, Counsel to Telecommunications for the Deaf and Hard of Hearing, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 13-24, at 2 (Dec. 20, 2018); see also *id.* at 2, 4 (analyzing the “brief and conclusory statements about waste, fraud, and abuse” on the record and determining that they comprise “essentially an echo chamber of whispers and speculation . . . backed by little concrete information that would justify” new requirements); *CaptionCall Reply Comments* at 6 & nn.13, 15.

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Now that this evidence is before the Commission, it cannot ignore the record; it must identify a different rationale for integrating IP CTS into the database.¹³

Third, even if there were evidence of any systemic or significant waste, fraud, or abuse in the program—which there is not—the Commission has not justified the need for a new tool to combat any such practices. The *Draft Order* states that the “Commission has no systematic process for limiting program access only to those determined to be eligible to use IP CTS,” and it “[a]ccordingly . . . now expand[s] the [Database] . . . to encompass IP CTS.”¹⁴ But this assertion overlooks the fact that the Commission is presently considering multiple proposals or limiting program access to eligible users.¹⁵ The Commission’s reasoning also overlooks the facts that IP CTS providers are routinely audited; that the Commission has ample related authority to “examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments”;¹⁶ and that the Commission’s recent Office of Inspector General’s audit report found zero dollars of improper payments to IP CTS providers from the TRS Fund.¹⁷

And despite relying on the prior integration of VRS customers into the URD, the Commission has never examined whether that integration has been effective to combat perceived waste, fraud, and abuse in the VRS program that would not otherwise have been detected.¹⁸ The

¹³ See *Nat’l Lifeline Ass’n v. FCC*, No. 18-1026, __ F.3d __, 2019 WL 405020, at *6 (D.C. Cir. Feb. 1, 2019) (describing that Commission could not justify policy change on reference to waste, fraud, and abuse “absent evidence that a substantial portion” of the affected service “are, in fact, fraudulent or wasteful, and the Commission pointed to none”); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008) (remanding where Commission offered no reasoned explanation for dismissal of empirical data submitted at its invitation and directing the Commission to “either provide a reasoned justification for retaining” its proposed approach or “to adopt another” approach “and provide a reasoned explanation for it”); cf. *Sierra Club*, 671 F.3d at 965 (explaining that agency action failed where new data had been compiled that “told a different story than that told by the earlier data” but the agency had “not analyze[d] this new data or explain[ed] why it chose not to analyze the data”); *Village of Bensenville v. FAA*, 457 F.3d 52, 71 (D.C. Cir. 2006).

¹⁴ *Draft Order* ¶ 1 (emphasis added).

¹⁵ See *FNPRM*, 33 FCC Rcd at 5854-63 ¶¶ 117-138 (requesting comment on proposals to ensure independent assessments of new users).

¹⁶ 47 C.F.R. § 64.604(c)(5)(D)(iii)(1), (6).

¹⁷ See Federal Communications Commission & Office of Inspector General, Audit of the Federal Communications Commission Improper Payments Elimination and Recovery Improvement Act FY 2017 (Report No. 18-AUD-01-02), at 4 (2018), https://transition.fcc.gov/oig/18-AUD-01-02_IPERIA_FY17_TM_Final_Audit_Report_05152018.pdf.

¹⁸ See *In re Structure and Practice of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8647-48 ¶¶ 62-67 (2013) (“*VRS Reform Order*”) (predicting that adoption of URD would facilitate efforts to combat waste, fraud, and abuse in VRS program), *vacated in other Part Sorenson Commc’ns, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014). In addition, the *Draft Order* does not explain how the fact

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Draft Order does not cite any data or other evidence demonstrating or suggesting that its URD requirements for VRS have reduced waste, fraud, or abuse in that program.¹⁹

II. The *Draft Order* Fails to Properly Conduct a Cost-Benefit Analysis Based on the Experience of the VRS URD.

The Commission should carefully consider the costs of imposing the URD on IP CTS providers, including by evaluating the costs of VRS implementation. The *Draft Order* proposes to adopt data submission and verification requirements for IP CTS that “largely parallel those in place for VRS.”²⁰ The Commission offers two reasons for believing that these costs will be “limited,” but neither is supported by the record.

The Commission first explains that these costs will be limited because IP CTS providers “already have been collecting the user registration data that must be populated into the Database.”²¹ But this is a red herring. The Commission does not even attempt to quantify the costs that providers will incur to go back to each user to obtain consent or to collect additional documentation from consumers that do not initially pass verification, nor does the Commission consider the cost of the back-end systems and personnel that will be necessary for Database integration. Most IP CTS providers do not have any experience with the URD and thus will have to invest in building capacity from scratch. And although CaptionCall’s VRS affiliate has created a backend system for VRS compliance, CaptionCall is a separate company with separate systems and it does not appear that CaptionCall will be able to leverage those investments for the IP CTS URD.²²

The Commission next explains that compliance costs will be “limited” because compliance will involve only a few activities—*viz.*, “contacting users to obtain consent for the submission of user data that already has been collected, uploading the data, and addressing any

that a device’s serial number is registered in the URD will ensure that providers are receiving compensation “only for calls made by individuals determined to be eligible to use th[e] service.” *Draft Order* ¶¶ 1, 23.

¹⁹ See *Nat’l Lifeline Ass’n*, 2019 WL 405020, at *7 (vacating order where, among other things, the Commission pointed to “no record evidence” that its new approach would have the purported effects on incentives, prices, or services).

²⁰ *Draft Order* ¶ 15.

²¹ *Draft Order* ¶ 21.

²² Specifically, CaptionCall’s use of Sorenson’s VRS URD system may not be feasible because Sorenson’s VRS URD system is integrated with Sorenson’s VRS backend systems, and CaptionCall uses entirely different backend systems. Sorenson also developed its URD system while the URD rules were changing, and thus has design features that may not be appropriate for IP CTS.

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verification issues regarding such data.”²³ But the Commission has not specifically requested or received comment on these costs for VRS providers.²⁴ Had it done so, the Commission would have record evidence showing that the implementation of VRS took nearly five years and imposed significant costs on providers, including **[[BEGIN HIGHLY CONFIDENTIAL INFORMATION:**

:END HIGHLY CONFIDENTIAL INFORMATION]] for CaptionCall’s VRS affiliate, Sorenson, alone. If the same per-user cost applies to IP CTS, the cost would be between **[[BEGIN HIGHLY CONFIDENTIAL INFORMATION:** **:END HIGHLY CONFIDENTIAL INFORMATION]]** in upfront costs for CaptionCall alone, and the costs may be higher for IP CTS than it has been for VRS.²⁵

Increasing costs to IP CTS providers, without understanding the scope of these costs is arbitrary and capricious,²⁶ and contrary to the expectation that agencies will engage in rigorous

²³ *Draft Order* ¶ 21.

²⁴ Indeed, as ClearCaptions has pointed out, the Commission’s 2013 further notice of proposed rulemaking did not seek comment on this issue, and the Commission’s 2018 *Report and Order* requested comment on allowing compensation for exogenous costs, but did not request estimates for the costs of complying with the URD. *See* Letter from Tamar E. Finn, Danielle Burt, & Stephany Fan, Counsel to ClearCaptions, LLC to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123, attachment at 2 (Feb. 1, 2019) (“*ClearCaptions Ex Parte*”); *see also In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13,420, 13,480 ¶¶ 128-130 (2013), *vacated in other Part Sorenson Commc’ns, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

²⁵ *See ClearCaptions Ex Parte* attachment at 2 (“Incremental costs associated with integrating . . . existing database[s] and customer management systems with the TRS-URD as well as costs associated with submitting user registration data to the TRS-URD are expected to be significant . . .”). The Commission effectively admits as much in explaining its decision to allow a “six-month data submission period”—which, as discussed below, is not adequate—because IP CTS users are “disproportionate[ly] senior citizens, many of whom are more likely to require assistance from family members or others in providing written consent.” *Draft Order* ¶ 25 (footnote omitted). Moreover, VRS providers were able to connect with their users by video. IP CTS providers will have to rely on email (and other electronic communications), mail, and even home visits to obtain consents. Obtaining consents thus will likely be more time- and labor-intensive. Moreover, the ongoing costs of URD compliance are likely to be substantially higher for IP CTS providers: As the Commission has noted, demand for VRS has remained relatively stable, while demand for IP CTS continues to grow as the population of individuals with hearing loss continues to grow and as more Americans undergo routine hearing tests in connection with annual physical exams. *See CaptionCall Comments* at 16-18.

²⁶ *Cf. Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 143-44 (D.C. Cir. 2005) (describing obligation under APA that SEC must “determine as best it can the economic implications of the rule it has proposed” and must “apprise itself—and hence the public and the Congress—of the economic consequences of a proposed regulation before it decides whether to adopt the measure”).

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cost-benefit analysis.²⁷ Doing so while simultaneously cutting IP CTS rates not only raises APA problems, but also could cause substantial harm to the market and IP CTS users, as well as result in new provider costs at a time when rates are decreasing. This approach risks causing substantial market disruption and loss of competition, none of which are accounted for in the *Draft Order*.²⁸ Though “an agency’s predictive judgments about the likely economic effects of a rule are entitled to deference, deference to such judgments must be based on some logic and evidence”;²⁹ otherwise the agency action risks invalidation under the APA.

III. The Commission Should Consider the Database Holistically as Part of Its Ongoing Rulemaking, or, at a Minimum, Should Adopt the Following Necessary Changes.

CaptionCall urges the Commission to seek comment on the Database and make a decision based on a complete and robust record.

The Commission recently launched a new rulemaking proposing changes to modernize the IP CTS program, including eligibility restrictions and other measures designed to ensure that waste, fraud, and abuse are not introduced into the program. The Commission could achieve a better policy outcome by considering integration of IP CTS into the Database in the context of other proposals based on a refreshed record.³⁰ Indeed, as noted above, CaptionCall supports

²⁷ See *In re Establishment of the Office of Economics and Analytics*, Order, 33 FCC Rcd 1539, 1543, Appendix Final Rules (2018) (establishing office of Economics and Analytics and requiring office to “[c]onduct[] economic, statistical, cost-benefit, and other data analysis of the impact of . . . proposed communications policies and operations”); cf. Exec. Order No. 13,777, 82 Fed. Reg. 12,285, 12,285 (Feb. 24, 2017) (requiring that certain agencies establish a task force to identify, among other things, regulations that impose costs that exceed benefits); Office of Management and Budget, List of Agencies with Current Waivers under Executive Order 13,777, at 1 n.1 (May 30, 2018) (acknowledging that independent regulatory agencies “are not subject to EO 13777 but are still encouraged to comply”), https://www.whitehouse.gov/wp-content/uploads/2018/06/EO13777_EnforcingRegulatoryReformAgenda.pdf.

²⁸ See *FNPRM*, 33 FCC Rcd at 5808-5809 ¶ 16 (adopting new interim rate of \$1.75 per minute from July 1, 2018 to June 30, 2019 and \$1.58 per minute from July 1, 2019 to June 30, 2020); see also Letter from David W. Rolka, Administrator, TRS Fund, to Marlene Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 (Dec. 4, 2018) (urging Commission not to reduce rates below \$1.75 per minute); *CaptionCall Reply Comments* at 16-17; Sprint Corporation Petition for Reconsideration, CG Docket Nos. 13-24, 03-123 (July 27, 2018). Moreover, to the extent the Commission moves to a submitted-cost methodology, which CaptionCall has shown is inefficient and backward looking, *CaptionCall Reply Comments* at 16-20; *CaptionCall Comments* at 61-64, the Commission must ensure that any costs of URD implementation are “allowable.”

²⁹ *Sorenson*, 755 F.3d at 708 (internal quotation marks, citations, and alterations omitted); see also *Nat’l Lifeline Ass’n*, 2019 WL 405020, at *7.

³⁰ See *Sierra Club*, 671 F.3d at 966-67 (rejecting agency argument that requiring compilation of new data would be burdensome where the data “had already [been] collected . . . and . . . presented to [the agency]” so there was “no need for a new study to be commissioned”).

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many aspects of the proposed reforms to the IP CTS program. But CaptionCall urges the Commission to adopt reforms holistically, rather than taking a piecemeal approach. The former will allow the Commission to understand the full benefits and costs of such reforms, including the likely impact on providers and the TRS Fund.³¹

If the Commission nonetheless moves forward now, it should, at a minimum, learn from its experiences with implementing the URD for VRS and adopt the following changes to the *Draft Order*.³²

First, the Commission should extend the time for providers to implement the URD for current users. The *Draft Order* would require providers to collect and submit data and consents for the entire IP CTS installed user base within “six months after . . . the TRS User Registration Database is ready to accept such information,”³³ which will be announced in a Public Notice. CaptionCall expects to be able to start registering new users shortly after the URD is ready for IP CTS information, with a brief window to work with Rolka Loube to test the data-submission process. But for existing users, the VRS experience proves that it takes time to integrate systems, obtain consents, and submit the data. CaptionCall estimates that it will need 24 months to collect from its current IP CTS users the necessary consents, as well as any additional documentation for consumers that cannot be validated through LexisNexis. Once the TRS-URD is ready to receive IP CTS user data, the Commission should adopt a phase-in approach and require that a certain percentage of existing users (*e.g.*, 25 percent) be integrated every 6 months and require 100 percent by 24 months. This phased-in approach should minimize the need for

³¹ CaptionCall also notes that the *Draft Order* proposes to move the existing IP CTS registration and certification requirements currently set forth in 47 C.F.R. 64.604 to 64.611. See *Draft Order* ¶ 14 n.32. However, portions of the IP CTS registration and certification requirements that would be moved were invalidated by the D.C. Circuit’s decision in *Sorenson Communications*, discussed *supra*. See *Consumer and Governmental Affairs Bureau Reaffirms Application of Internet Protocol Captioned Telephone Service (IP CTS) Rule on User Registration and Certification*, Public Notice, 29 FCC Rcd 9442 (2014). And in any event, these requirements are likely to change at the end of the current rulemaking. See *FNPRM*, 33 FCC Rcd at 5883-84 App. C. Under no circumstances should the Commission move rules that were invalidated by the D.C. Circuit.

³² In addition to the changes outlined below, CaptionCall also urges the Commission to encourage Rolka Loube to make certain improvements to the current instructions and system before integrating IP CTS into the database. For instance, the URD instructions do not define critical error codes, which omission can force providers to spend unnecessary time and resources trying to determine the root cause of submission failures. The URD Web interface is also missing significant information and does not allow providers the ability to validate users in real time—for example via a secure API process.

³³ *Draft Order*, App. B, Proposed rule 47 C.F.R. § 64.611(j)(ii).

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waivers and extensions. Indeed, it took VRS providers more than four years (and extensions were still necessary) to collect the necessary information.³⁴

Moreover, as the *Draft Order* acknowledges, providers will have to contact *every* current IP CTS user and obtain a signed consent to submit that user’s information to the URD, which is likely to take longer for IP CTS providers than it did for VRS providers. First, the number of current IP CTS users is significantly larger than the number of VRS users. Second, as the *Draft Order* acknowledges, IP CTS users are disproportionately “senior citizens, many of whom are more likely to require assistance from family members or others in providing written consent.”³⁵ Thus, even though it is true that IP CTS providers have already collected much of the required information (such as the last four digits of users’ Social Security numbers (“SSNs”) and dates of birth), that does not reduce the time that it will take to contact every customer to obtain the required consents.

Second, the Commission should make changes to ensure that the URD process does not inadvertently disqualify existing users from service during the pendency of any appeal or cause delays in initiating service for new users whose verification may take several weeks to complete, but who are ultimately verified. Consistent with the VRS process, the Commission should make clear that all minutes of service to current users, including during the Commission appeals process, are compensable (if the user is ultimately verified).³⁶

³⁴ The *Draft Order*’s claim that the six-month window for IP CTS providers “is longer than the 120 days (including extensions) that were allowed for VRS,” *Draft Order* ¶ 25, is a bit misleading. The Commission adopted the rule requiring collection of consents in June of 2013, *VRS Reform Order*, 28 FCC Rcd at 8651 ¶ 70, but it did not announce that the VRS URD was ready to accept user information until December 2017. Sorenson began soliciting and collecting consents in June 2014 and therefore had several years to obtain the necessary consents. Here, by contrast, the Commission appears to be planning to rush to implementation: Although it is not entirely clear how soon the URD would be ready to accept information for IP CTS users, the *Draft Order* suggests that this will happen quickly because “the Database is already built,” and because the Administrator “[has] already . . . established and tested procedures for collecting, organizing, verifying, protecting, and retrieving consumer registration data.” *Draft Order* ¶ 20. Thus, the *Draft Order* at least suggests that the six-month clock may start running soon.

³⁵ *Draft Order* ¶ 25 (footnote omitted).

³⁶ See *In re Structure and Practices of the Video Relay Service Program*, Order, 33 FCC Rcd 2062, 2064-65 ¶ 8 (CGB 2018) (“*Waiver Order*”). The *Draft Order* envisions this result. See *Draft Order* ¶ 16 (“[A]s was the case with VRS users, if a provider submits the required information for an existing IP CTS user on or before the end of the data submission period, and verification by the Database has not been completed, the provider may request compensation for minutes of use incurred by such user after the deadline while verification is being completed, and the TRS Fund administrator will provide compensation for such minutes if the user is ultimately verified.”). But, to avoid any doubt, the Commission should clarify this process extends to situations where a current user fails the initial verification process and is appealed to Rolka Loube or the Commission and is then verified.

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Similarly, with respect to new users, under the *Draft Order*, providers cannot request compensation for minutes for service provided before a user is verified. Given the experience in VRS, however, the verification process may take a few weeks—often through no fault of the user or the provider.³⁷ Indeed, the Commission’s own records indicate that more than 20 percent of users initially fail identity verification.³⁸ VRS providers, with the support of the TRS Advisory Council and the Consumer Groups, have proposed a waiver allowing them to submit calls for compensation during the two weeks before a user was verified—but only after the user’s identity has been ultimately verified. The Commission should adopt this approach for IP CTS. Doing so would impose no cost on the TRS Fund—the risk of an ineligible user falls entirely on the TRS providers.³⁹

Third, the Commission is proposing that IP CTS providers, like VRS providers, collect the last four digits of each user’s SSN or Tribal Identification Number for identity verification.⁴⁰ If a user does not have an identification number and/or fails the URD’s automated identity-verification process (which, as noted, has happened for between 20 and 30 percent of VRS users, providers must obtain copies of other highly sensitive documents to establish the user’s identity.⁴¹ The Commission should make clear that such sensitive documents may be destroyed after the conclusion of the first audit. While the Commission permits *the URD Administrator* to destroy its copies of such records, it should permit providers to do the same.⁴² Basic privacy

³⁷ Rolka Loube uses LexisNexis, whose data is constantly updated, so a user that is initially rejected may pass on appeal. In addition, when it encounters gaps or errors in the LexisNexis data, Rolka Loube often requires the collection of additional documents—and when users are unable to provide the particular documents that Rolka Loube requested, they are often able to provide alternative documents to verify eligibility.

³⁸ Joint Petition of VRS Providers for a Waiver, CG Docket Nos. 03-123 & 10-51, at 7 (June 19, 2018).

³⁹ The Commission should, at a minimum, seek comment on this proposal.

⁴⁰ See 47 C.F.R. § 64.611(a)(4) (requirements for VRS); *Draft Order* ¶ 15 (proposing same for IP CTS).

⁴¹ See *In re Structure and Practices of the Video Relay Service Program*, Order, 30 FCC Rcd 4806, 4809 ¶ 8 (CGB 2015).

⁴² Providers and the Consumer Groups have expressed similar concerns about the collection and retention of confidential information from VRS users. See Letter from All Six VRS Providers to Marlene Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123 at 2 (June 26, 2015); see also Letter from Sheri A. Farinha, Vice Chair, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. et al. to Marlene Dortch, Secretary, FCC, CG Docket Nos. 10-51, 03-123 at 1-2 (Nov. 12, 2015). The Commission has issued a video to the public assuring consumers that “[t]he last 4 digits of the SSN will be destroyed immediately after the completion of the validation process.” See FCC, TRS Registration Database, <https://www.fcc.gov/trs-urd#block-menu-block-4> (Q7), also available at <https://youtu.be/KDVO07EtKrM>. But the Commission has never adopted this requirement as a formal clarification or regulation, and Rolka Loube appears to expect providers to retain highly sensitive information or documents used for identity verification. Thus, the Commission must address retention expressly in the *Draft Order*.

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best practices include destroying sensitive information as soon as possible.⁴³ To the extent the Commission wants Rolka Loube to audit these records, it should require Rolka Loube to do so within one year of the user's submission to the Database.⁴⁴ After such audits are completed, providers should be able to destroy such sensitive documents.

Fourth, the Commission should allow users who do not have an SSN or who fail the initial identification process to rely on documents that are appropriate to the IP CTS user base, which is overwhelmingly elderly. For verifying identity, the Commission has required that a number of documents be unexpired, including a driver's license, US Government, military or state ID, passport or health insurance card.⁴⁵ However, the expiration date has no bearing on whether the document verifies identity. Because these users often no longer drive, work or travel, the Commission should accept, for example, expired driver's licenses or passports.⁴⁶ Similarly, for the purpose of verifying whether the consumer lives in the United States,⁴⁷ the Commission should broaden the eligible categories of documents to include, for example, medical prescription receipts, doctors appointment correspondence including appointment confirmations, insurance statements and cards, bank statements, and 1099s.⁴⁸ Adopting these changes would not address CaptionCall's larger concern about the Commission's rush to action

⁴³ The Commission's claims that its URD requirements do not present privacy concerns because providers "must obtain users' prior consent to transmit their data to the Database" and because providers must collect "only the last four digits of registrants' Social Security numbers," *Draft Order* ¶¶ 18-19, are misplaced. With respect to the former claim, although it is true that users must sign a "consent" form, these submissions are not traditionally voluntary or empowering. The Commission has made the submission of highly sensitive information and the consent process a prerequisite to accessing the functionally equivalent service to which TRS users have a statutory right. With respect to the latter claim, the collection and retention of even the last four digits of an SSN can pose a significant privacy risk. *See* Hearing Loss Association of America et al. Comments To Further Notice Of Proposed Rulemaking, CG Docket Nos. 13-24, 03-123 at 8 (Nov. 4, 2013) ("opposing any proposal that IP CTS consumers provide their Social Security numbers, either in full or just the last four digits of the social security number, for inclusion in the proposed centralized registration and verification database"). And, in any event, for users who fail the identity-verification process, providers must collect other highly sensitive documents.

⁴⁴ The Commission's Lifeline rules require eligible telecommunications carriers to retain documents used in the National Lifeline Accountability Database process for three years. *See* 47 C.F.R. § 54.417(a); *id.* § 54.404(b)(11); *In re Bridging the Digital Divide for Low-Income Consumers*, Order Denying Stay Petition, 33 FCC Rcd 6353, 6374-6042, Appendix A, Ex. B. (WCB 2018). The purpose in Lifeline, however, is to confirm a user's eligibility to participate in the program. Here, eligibility is not linked to income but to a user's hearing loss, so retaining such information is not necessary.

⁴⁵ 30 FCC Rcd at 4809 ¶ 8.

⁴⁶ Other Federal (including military) or state issued IDs or employer-issued IDs, should also be sufficient for verifying identity even if expired.

⁴⁷ *See* 30 FCC Rcd at 4809 ¶ 9.

⁴⁸ Although more likely applicable to VRS than IP CTS, school or college acceptance letters should also be valid verification of U.S. residence.

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in this item. But doing so would help mitigate the worst effects of this hasty and unnecessary decision.

CaptionCall supports targeted reforms to modernize the IP CTS program. Instead of requesting comment from CaptionCall and other stakeholders on the adoption of URD requirements for IP CTS, however, the Commission is poised to rush forward without the benefits of a refreshed record and a thorough cost-benefit analysis based on the experience of VRS providers with nearly identical requirements. This approach would not reflect reasoned decision making, even if the Commission were to adopt the necessary changes to make the integration process more efficient and less burdensome for providers. There is a better approach. The Commission should incorporate this proposal into the current IP CTS rulemaking, and consider it holistically with the other reforms that are already intended to address the same perceived problems in the program.

Respectfully submitted,

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